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SUBJECT: ROMANIA: BYSTROE CANAL HOPES SINKING DESPITE INTERNATIONAL
SUPPORT

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¶1. (SBU) Summary: At a recent conference in Bucharest, 48 countries - including, surprisingly, Ukraine itself - agreed that Ukraine's work on the Bystroe Canal is not compliant with the Espoo Convention. Despite this public admonishment, the Romanian Ministry of Foreign Affairs (MFA) reported that Ukrainian dredging and construction on the Canal resumed the very same day, reinforcing pessimism at the MFA that Romania can persuade Ukraine to halt work on the Canal, located in the ecologically sensitive Danube Delta. Please see paragraph six below for background on the Bystroe controversy. End Summary.

¶2. (U) According to a May 23 United Nations Economic Commission for Europe (UNECE) press release, the Bystroe Canal issue was one of several topics discussed in Bucharest at the May 19-21, 2008 "Fourth Conference of the Parties of the Espoo Convention on Environmental Impact Assessment in a Transboundary Context." During the conference, the 48 parties, largely European states including Ukraine, voted unanimously that Ukraine was non-compliant with the terms of the Espoo Convention in the Bystroe case. According to the UNECE web site and local media reports, the countries agreed that articles two, three, four, and five, regulating the authorization of projects with potential cross-border environmental impacts, were not adhered to.

¶3. (SBU) As a result of this finding, the UNECE press release states that the parties to the Convention issued a "caution" to the Government of Ukraine (GOU) requesting that all work on the Bystroe Canal be stopped, and giving the GOU until October 31, 2008 to comply. In response, the Ukrainian delegation - under heavy pressure, according to the MFA - pledged to consider discontinuing the project and promised to postpone Phase Two until the provisions of the Convention have been fully implemented. According to a May 2007 Espoo Inquiry Commission report, Phase Two of the project is slated to include the dredging of various shallow channels upstream, the establishment of additional dumpsites for dredged material, and the expansion of a retaining dam built during Phase One of construction.

¶4. (SBU) Econoffs met on May 30 with Dumitru Liviu, Chief of the Department for Border and Maritime Issues at the MFA's Legal Affairs Directorate, to follow up on the results of the Conference. He said that on the very same day that Ukraine vowed to consider halting work, dredging and construction on the Bystroe Canal resumed after a lull. His disappointment stems from the fact that several international bodies, including the International Inquiry Commission under the 2006 Economic Commission for Europe Environmental Impact, have sided with the Romanians, but to little apparent effect. He complained that the Espoo Convention lacks sufficient enforcement mechanisms, and without them, there were few incentives for the GOU to stop work.

15. (SBU) According to Liviu, progress toward a bilateral monitoring mechanism (reftel) has also come to a standstill. This monitoring mechanism was to be comprised of experts from both countries and established by the end of November 2007. Liviu reported that the monitoring mechanism simply was not feasible, as Ukraine has not provided the necessary impact assessments and remains unwilling to discuss environmental impact mitigation, compensation, or alternatives. Liviu said that Romania has begun discussions of possible bilateral and multilateral measures to use as a last resort, since Ukraine is in breach of several conventions relating to wetlands and wildlife protection.

16. (SBU) Background: The Danube Delta was designated an Internationally Important Wetland and UNESCO World Heritage Site in 1991, due in part to its importance to millions of migratory birds. Ukrainian authorities started work on the Bystroe Canal in the Danube Delta in 2004, with the intent of opening a deep-water route under their control from the Black Sea to the Danube River to reduce ship transit costs. Various international bodies and NGOs have determined that dredging the Bystroe Canal will likely have a significant negative impact on the Danube Delta ecosystem, about 80% of which is in Romania. In July 2006, the UNECE Environmental Impact Assessment International Inquiry Commission, in accordance with the Espoo Convention on Environmental Impact Assessments in a Transboundary Context, unanimously concluded that work on the Bystroe Canal will have a significant, negative transboundary impact. The UN Commission cited the loss of floodplain habitats for spawning fish and nesting birds, the impact from the increased concentration of suspended sediments on fish downstream, and the muddier waters resulting from dumping sediment into the Black Sea. The Commission recommended steps on cooperation to assess and mitigate the environmental damage caused by the dredging. End Background.

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17. (SBU) Comment: Despite the recent Espoo Convention ruling and Ukrainian pledges, the pessimistic mood within the Romanian MFA has deepened. Bucharest is frustrated by what it sees as cynical Ukrainian moves, such as voting to find Ukraine out of Espoo compliance on the very day that work resumed on the disputed Canal. Unless new deterrent penalties are added to the Espoo Convention - something very unlikely to happen before the Bystroe Canal project is finished - Romania sees little prospect of forcing Ukraine to stop the dredging. In the short term, international experts including the UN estimate there will be a negative impact on the habitats of many birds, plants and fish native to the Delta, including several endangered species of sturgeon. If and when the Canal becomes fully operational, there could be continued damage caused by maintenance dredging and shipping traffic. End Comment.

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